

**REMARKS**

This responds to the Office Action dated December 3, 2003.

**Claim Rejections – 35 U.S.C. 112**

Claims 1 and 7 are rejected under § 112, second paragraph, as being indefinite, since it was unclear as to how the telescopic connector means provides a weight measurement. These claims have been modified to state that the telescopic connector means is configured for applying a weight to the weighing scale track consisting essentially of the weight of the bird carrier, the trolley, and the carcass, in response to the shackle assembly engaging the weighing scale track, but without the weight of the turning means. (Claim 1.)

**Claim Rejections – 35 U.S.C. 103**

Claims 1, 2, 4, 5, 7, 8, 10, 19-21, 23 and 25 were rejected under § 103(a) as being unpatentable over Van Den Nieuwelaar, et al. (5,037,351) in view of Sullivan (2,456,224). The rejection indicates that Van Den Nieuwelaar, et al. discloses a shackle, but does not disclose a telescopic connector means for telescopically connecting the trolley support to the bird carrier, and the bird carrier the trolley support that comprises a tubular support with a rod received therein with regard specifically to claims 23 and 25, the relationship of the wheels, upper rod and lower rod. The rejection indicates that Sullivan discloses the telescopic connector means at 23.

Sullivan is not analogous art. Sullivan discloses a spring cylinder 19 that contains the coil compression spring 25. The function of the spring is to lift the load-carrying hook 31 out of harm's way, and then to depress the hook or raise the hook by running the

rollers 22 along the cam bars 36. This lifts or depresses the load carrying hook for the purpose of bring it down to a convenient height for loading, etc. The description of contacting the rollers with the cam bars to bring the load carrying hook down is found at column 3, lines 27-47. The description for automatically elevating the load carrying hooks is found in column 3, lines 62-72. Sullivan is not a weighing device.

There is no suggestion in Sullivan that it could be combined with the elements of Van Den Nieuwelaar, et al. to perform a weighing function. Indeed, Van Den Nieuwelaar, et al. shows a completely different type of apparatus for isolating the weight of the bird and its shackle from the overhead trolley system, by tilting the roller/cam follower with respect to the bearing rod 6.

The proposed arrangement of Van Den Nieuwelaar, et al. and Sullivan would not provide a distinct advantage of applicant's invention. Applicant's invention has a telescoping arrangement whereby stability of the bird and the bird carrier can be maintained during the passing of the bird through cutting apparatus. For example, the telescopic arrangement tends to reduce the swinging and rotation of the bird during these functions, particularly as the bird approaches a cutter apparatus. By contrast, Van Den Nieuwelaar, et al. would continue to have a more radical swinging motion.

In addition, the claims of the application set forth the turning of the bird, the bird carrier, the telescoping feature, and the trolley, all in unison, as the birds approach a cutting station. This is not disclosed in the combination of Van Den Nieuwelaar, et al. and Sullivan.

A feature of applicant's invention is that the trolley only has to lift the weight of the bird, the bird carrier and its support rod, without having to lift the turning mechanism, the upper support rod, and any of the elements above the upper support rod, such as the conveyor trolley components. It appears that the combination of Sullivan with Van Den Nieuwelaar, et al. would result in the cam of Sullivan lifting against the spring force, with the spring working against the weight of the elements above it. This would not provide an accurate weight of the bird or any other load applied to the load carrying hook 31. Therefore, *the modification of Van Den Nieuwelaar, et al. to include the features of Sullivan would prevent Van Den Nieuwelaar, et al. from accurately weighing the birds that it would carry.* Also, the use of Sullivan to recreate Van Den Nieuwaller, et al. first requires recreating Sullivan to get rid of the spring, but there is no suggestion that this could be done to achieve the combination used to reject the claims of the application.

Van Den Nieuwelaar, et al. also appears to turn the shackles with respect to the cam following rollers when the shackles are elevated on the weighing device. This requires the rollers to maintain their orientation throughout the run along the processing path. By contrast, applicant turns his trolley with the use of a conventional star wheel turning element.

Claim 4 has the feature of the axle passing through the aligned openings and one of the aligned openings being of larger breadth so as to permit telescopic movement. This is not shown by the applied references.

Claim 9 is rejected under § 103(a) as being unpatentable over Van Den Nieuwelaar, et al. in view of Sullivan as applied to claim 8, and further in view of

Altenpohl (3,781,946). Altenpohl is used to disclose the overlapping ends of the telescopic trolley support and bird carrier, with aligned openings extending therethrough, and the wheel axle extending through the aligned openings.

However, Altenpohl does not telescope about its trolley axle. This feature is now emphasized in claim 8, which states that at least one of the aligned openings is formed as an elongated slot, and the trolley wheel axle extends through the aligned openings and is movable along the slot. None of the applied references disclose this feature. This feature allows for accurate weighing of the bird and also tends to stabilize the bird as it approaches a cutting station or other processing station along the processing path.

Claims 11-16 were rejected under § 103(a) as being unpatentable over the same references above applied.

The rejection indicates that it would have been obvious to take the shackle assembly of Van Den Nieuwelaar, et al., as modified by Sullivan (with the spring, slotted cylinder) and Altenpohl (with the axle running through the joint), and further adding the rod fixed to the trolley support and the tubular support slidably receiving the rod of Altenpohl for the purpose of making the device stronger, more flexible, etc.

Applicant submits that the copious amount of hindsight is used to make this rejection. Sullivan does not modify Van Den Nieuwelaar, et al. in a way that Van Den Nieuwelaar, et al. would remain capable of weighing poultry. The spring bias of Sullivan would destroy any accurate weighing of poultry by the principal reference. None of the references disclose the desired telescopic movement with the slotted aligned openings, with the axle of the trolley passing through those openings. This mechanical difference

that is not disclosed by or suggested by the applied references provides an improvement in the stability of the bird as it moves along the processing path, toward and then into a cutting device, where the bird is cut up. For example, how would the structure of Altenpohl be used to turn the load carried by the Sullivan spring cylinder when approaching a bird cut up device.? Also, wouldn't the combined references require the weighing device of the principal reference receiving not only the weight of the spring cylinder and the spring and its piston 20, but also having to account for the additional spring force, or if reversed, the subtraction of the spring force of Sullivan.

#### **Declaration under Rule 132**

Applicant submits that the references generally do not teach or suggest the claimed subject matter of the application. Moreover, applicant has submitted a Declaration under Rule 132 by its President, Peter H. Goffe, proving that the cut-up lines in poultry processing plants had no method to accurately weigh the birds. It was necessary to weigh the birds prior to being placed on the cut-up line. The invention of the application enabled the cut-up function and weighing function to be combined in the same line.

The Declaration further states that repeated requests from most of the customers of applicant had been received, requesting applicant to do something so that these two functions could be combined that would reduce the number of processing steps to permit higher line speeds and processing and thus reducing costs of processing. Accordingly, applicant's invention has provided a solution to a long felt need.

Further, the Declaration of Mr. Goffe indicates that the design of the new shackle allows it to be rigid when the bird is being cut, to insure the accuracy of the cut, and also to be telescopic when weighing the bird. The telescopic shackle basically serves three functions. First, it allows the bird to be accurately weighed. Second, the new shackle is designed so that it can be accurately guided through the various cut-up modules in a processing line. Third, the new shackle can be held rigid when the cuts to the bird are made to insure accuracy of the cut.

Moreover, the new shackle allows the processing plants to accurately weigh the bird in the cutting line. The telescopic feature of the shackle results in more accurate weighing of the bird because only the bird and a smaller portion of the shackle are weighed and it is easy to determine the weight of the small portion of the shackle.

An impressive statement in the Declaration is that the new shackle has enjoyed commercial success between its introduction in the summer of 2001 up until the filing of the Declaration on February 20, 2003. During that period, approximately \$7,604,000 in sales were made of cutting lines that incorporate the new shackle to some of the leaders in the poultry processing industry.

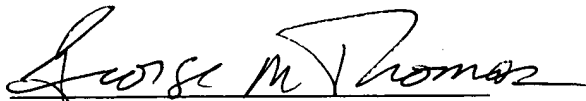
Applicant submits that the Declaration by Mr. Goffe comprises secondary considerations concerning obviousness or unobviousness of the claimed invention.

Graham v. John Deere Co., 383 US 1, 148 USPQ 459 (1966). The references applied in the rejections made in this application do not show shackles that can be successfully used for both cut-up and weighing. The features of applicant's shackles accomplish this and also accomplish more accurate weighing of the bird. The statement of Mr. Goffe

indicates that there was a need for this invention that had not been satisfied, and that once satisfied, the sales of the invention were substantial in the industry.

Accordingly, applicant submits that the secondary considerations should assist in the evaluation of this application.

Respectfully submitted,



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